

**STATE PUBLIC DEFENDER[493]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 7, “Definitions,” Chapter 11, “Attorney Fee Contracts,” and Chapter 12, “Claims for Indigent Defense Services,” Iowa Administrative Code.

These amendments clarify the rules regarding attorney fee contracts in appellate cases and fee limitations to bring the State Public Defender’s administrative rules into compliance with the Iowa Supreme Court’s decisions in State v. Dudley and Simmons v. State Public Defender.

Pursuant to Iowa Code section 17A.4(3), the State Public Defender finds that notice and public participation are unnecessary because the Supreme Court’s decision makes it clear that changes must be made immediately to deal with outstanding claims which may not be processed under existing rules.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the State Public Defender further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective December 7, 2010, because the Supreme Court’s decision makes it clear that changes must be made immediately to deal with outstanding claims which may not be appropriately processed under existing rules and because these amendments are in the public interest.

These amendments are also published herein under Notice of Intended Action as **ARC 9294B** to allow for public comment.

These amendments are intended to implement Iowa Code chapters 13B and 815.

These amendments became effective December 7, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **493—7.1(13B,815)**, definition of “Appeal,” as follows:

“Appeal” means a proceeding, other than an interlocutory appeal, application for discretionary review, or juvenile court petition on appeal, filed with the Iowa supreme court and does not include a petition for certiorari filed with the United States Supreme Court.

ITEM 2. Amend rule **493—7.1(13B,815)**, definition of “Contract,” as follows:

“Contract” means a written agreement between the state public defender and an attorney to provide legal services to an indigent person. The contract may be for the provision of legal services at either the trial court level or the appellate court level.

ITEM 3. Amend rule **493—7.1(13B,815)**, definition of “Date of service,” as follows:

“Date of service” means, for adult fee claims, the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of mistrial, the date a warrant was issued for the client, or the date of a court order authorizing the attorney’s withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, mistrial or the issuance of a warrant. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. For interim claims or claims for other professional services performed by nonattorneys, “date of service” means the last date on the itemization. For juvenile claims, “date of service” means the date of filing of an order as a result of the dispositional hearing or most recent review hearing, the date on which the client ceased to be a party in the CINA case, the date of a court order authorizing the attorney’s withdrawal from a case that was not dismissed, the date jurisdiction is waived to adult court, the date on which venue is changed, or the date of dismissal. For noncontract appellate claims, “date of service” means the date on which the procedendo issues or the case is dismissed. For contract appellate claims, “date of service” means the date of on which the case was dismissed, the date of a court order authorizing the attorney’s withdrawal prior to the filing of the page-proof brief, the date on which the proof brief was filed, or final brief the date on which the procedendo was issued. For claims filed as a result of a notice of action letter, “date of service” means the date of the notice of action letter. For claims filed as a result of a court order after hearing for review of the fee claim, “date of service” means the date of the order.

ITEM 4. Amend rule **493—7.1(13B,815)**, definition of “Fee limitations,” as follows:

“Fee limitations” means the attorney fee limitations established by the state public defender for specific classes of cases as specified in rule 493—12.6(13B,815), together with out-of-pocket expenses approved by the state public defender, whether submitted by a public defender, by an appointed attorney pursuant to 493—Chapter 12, or by another professional pursuant to 493—Chapter 13.

ITEM 5. Amend rule **493—7.1(13B,815)**, definition of “Paralegal time,” as follows:

“Paralegal time,” which is payable from the indigent defense fund, means time spent in a Class A felony case at the trial court level in which only one attorney is appointed preparing pleadings and motions, reviewing transcripts, performing legal research, and interviewing witnesses in person, and attending staffings in juvenile cases. In Class A felony cases in which only one attorney is appointed, paralegal time may include time spent in court assisting the appointed attorney. Paralegal time does not include typing, scheduling, answering the telephone, talking on the telephone except when interviewing witnesses, or other clerical activities or activities that duplicate work performed by the appointed attorney. Paralegal time is not payable in any other cases or in Class A felony cases in which two attorneys are appointed.

ITEM 6. Amend rule **493—7.1(13B,815)**, definition of “Timely claim,” as follows:

“Timely claim” means a claim submitted to the state public defender for payment within 45 days of the date of service in a case in which the attorney was appointed after June 30, 2004. A claim not submitted within 45 days of the date of service shall be deemed a timely claim if the delay in submitting the claim was due to the ~~extended illness, hospitalization or death of the claimant or due to the extended illness or hospitalization of the claimant~~ within 5 days before the expiration of the 45-day limitation. A timely claim returned to the claimant for additional information shall continue to be deemed timely only if resubmitted with the required information within 45 days of being returned by the state public defender.

ITEM 7. Amend rule 493—11.2(13B), introductory paragraph, as follows:

**493—11.2(13B) Contracts.** An attorney may enter into a contract with the state public defender for the provision of legal services to indigent persons at either the trial level or the appellate level. Nothing in this rule is intended to imply that an attorney may not have both a contract for trial court work and a contract for appellate work.

ITEM 8. Amend subrule 11.5(1) as follows:

**11.5(1) A Contract elements.** The state public defender may enter into a contract with a private attorney ~~may be awarded~~ for the provision of trial or appellate legal services to indigents in cases as determined by the state public defender at the trial court level. The state public defender may also enter into a contract with a private attorney for the provision of legal services to indigents in cases at the appellate level.

ITEM 9. Amend subrule 11.5(6) as follows:

**11.5(6) Compensation.** Unless the contract provides for a different rate or manner of payment, the attorney shall be compensated as set forth in rule 493—12.4(13B,815) for trial work performed pursuant to a contract for services at the trial court level and rule 493—12.5(13B,815) for appellate work performed pursuant to a contract for services at the appellate level.

ITEM 10. Amend subrule 11.5(7) as follows:

**11.5(7) Contract form.** Unless the attorney and state public defender agree in writing to vary the terms of the contract between them, the terms contained in the Legal Services Contract Indigent Defense Casework No. 493-04 493-10 shall constitute the agreement between the parties for the provision of legal services at the trial court level. The terms of Legal Services Contract Appellate Casework No. 493-10A shall constitute the agreement between the parties for the provision of legal services at the appellate level.

ITEM 11. Amend paragraph **12.2(1)“c”** as follows:

c. A copy of any application and court order authorizing the attorney to exceed the attorney fee limitations.

ITEM 12. Rescind rule 493—12.5(13B,815) and adopt the following new rule in lieu thereof:

**493—12.5(13B,815) Appellate contracts.** Subject to the provisions of this rule, an attorney who has entered into an appellate contract with the state public defender shall be paid pursuant to the terms of this rule for each appellate case to which the attorney is appointed. This rule applies to all appellate contract claims received by the state public defender on or after December 7, 2010.

**12.5(1) Frivolous appeals.** In an appeal in which the attorney withdraws from a case either based on a determination that the appeal is frivolous or for any other reason or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid for all reasonable, necessary and appropriate hours claimed on the itemization at the rate of \$60 per hour.

**12.5(2) Juvenile cases.** For juvenile appeals, the following provisions apply.

*a.* In a juvenile case in which a petition on appeal is filed, an appointed trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, subsequent attorney fee claims must be submitted on an Appellate form. Any amount paid on the petition on appeal shall be considered in determining whether the attorney hours claimed on subsequent appellate claims are reasonable and necessary.

*b.* In an appellate case in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid for all reasonable, necessary and appropriate legal services and expenses claimed on the itemization at the rate of \$60 per hour.

**12.5(3) Appeals from a guilty plea.** Notwithstanding the provisions of subrule 12.2(1), an attorney who has entered into an appellate contract with the state public defender and whose client is appealing from a judgment as the result of a guilty plea need not provide an itemization of legal services provided in the appeal if the amount of the attorney fee portion of the claim is \$600 or less. If the amount of the claim is in excess of \$600, the attorney must provide an itemization and will be paid for all reasonable, necessary and appropriate legal services claimed on the itemization at the rate of \$60 per hour, together with permissible out-of-pocket expenses.

**12.5(4) Appeals from a trial.** Notwithstanding the provisions of subrule 12.2(1), an attorney who has entered into an appellate contract with the state public defender and whose client is appealing from a judgment as the result of a jury trial or bench trial need not provide an itemization of legal services provided in the appeal if the amount of the attorney fee portion of the claim is \$1,800 or less. If the amount of the claim is in excess of \$1,800, the attorney must provide an itemization and will be paid for reasonable, necessary and appropriate legal services claimed on the itemization at the rate of \$60 per hour, together with permissible out-of-pocket expenses.

**12.5(5) Applications for further review.** In a case in which an application for further review is filed, the attorney will be paid for all reasonable, necessary and appropriate legal services claimed on the itemization at the rate of \$60 per hour, together with permissible out-of-pocket expenses.

**12.5(6) Application of fee limitations.** The fee limitations and procedures provided in rule 493—12.6(13B,815) have no application to appellate contracts.

ITEM 13. Amend rule 493—12.6(13B,815), catchwords, as follows:

**493—12.6(13B,815) Fee Attorney fee limitations.**

ITEM 14. Amend subrule 12.6(1), introductory paragraph, as follows:

**12.6(1) Adult cases.** The state public defender establishes attorney fee limitations for combined attorney time and paralegal time for the following categories of adult cases:

ITEM 15. Amend subrule 12.6(2), introductory paragraph, as follows:

**12.6(2) Juvenile cases.** The state public defender establishes attorney fee limitations for ~~combined~~ attorney time ~~and paralegal time~~ for the following categories of juvenile cases:

ITEM 16. Amend subrule 12.6(3) as follows:

**12.6(3) *Appellate cases.*** Except as provided in this subrule, the state public defender establishes a an attorney fee limitation of \$2,200 \$2,400 for combined attorney time and paralegal time for all activities reasonable, necessary, and appropriate legal services in appellate cases filed with the Iowa supreme court.

*a.* In an appeal to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with a an attorney fee limitation of \$1,000. In an appeal to which the attorney was appointed after June 30, 2006, and before July 1, 2007, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$55 per hour, with a an attorney fee limitation of \$1,100. In an appeal to which the attorney was appointed after June 30, 2007, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$60 per hour, with a an attorney fee limitation of \$1,200.

*b.* In an appellate case to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a an attorney fee limitation of \$500. In an appellate case to which the attorney was appointed after June 30, 2006, and before July 1, 2007, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$55 per hour, with a an attorney fee limitation of \$550. In an appellate case to which the attorney was appointed after June 30, 2007, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$60 per hour, with a an attorney fee limitation of \$600.

*c.* In a juvenile case in which a petition on appeal is filed, an appointed trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing ~~and the trial court appoints the trial attorney to pursue the full briefing~~, subsequent attorney fee claims must be submitted on an Appellate form. Any amount paid on the petition on appeal shall be considered in determining whether subsequent appellate claims exceed the fee limitations.

This subrule does not apply to appellate cases to which an attorney with an appellate contract with the state public defender is appointed. See rule 493—12.5(13B,815).

ITEM 17. Amend subrule 12.6(4) as follows:

**12.6(4) *Claims in excess of fee limitations.*** A claim in excess of the attorney fee limitations will not be paid unless the attorney seeks and obtains authorization from the appointing court to exceed the attorney fee limitations prior to exceeding the attorney fee limitations. If authorization is granted, payment in excess of the attorney fee limitations shall be made only for services performed after the date of submission of the request for authorization.

ITEM 18. Amend subrule 12.6(5) as follows:

**12.6(5) *Retroactivity of authorization.*** Authorization to exceed the attorney fee limitations shall be effective only as to services performed after a request for authorization to exceed the attorney fee limitations is filed with the court unless the court enters an order before submission of the claim to the state public defender specifically authorizing a late filing of the application and finding that good cause exists excusing the attorney's failure to file the application prior to the attorney's exceeding the attorney fee limitations. "Good cause" as used in this subrule means a sound, effective and truthful reason. "Good cause" is more than an excuse, plea, apology, extenuation, or some justification. Inadvertence

or oversight does not constitute good cause. Retroactive court orders entered after the date of the state public defender's action on a claim are void. See Iowa Code section 13B.4(4).

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